

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

GERARDO GARCIA,	§	
	§	
Plaintiff,	§	
v.	§	No. 3:19-cv-382
	§	
CORNERSTONE INDUSTRIES CORP.	§	
	§	
Defendant.	§	

**DEFENDANT’S NOTICE OF REMOVAL PURSUANT TO 28 U.S.C. § 1446**

**TO THE HONORABLE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, EL PASO DIVISION:**

COMES NOW CORNERSTONE INDUSTRIES CORP. ("CORNERSTONE")

Defendant, and files this its Notice of Removal, and would respectfully show the Court as follows:

**Introduction**

1. CORNERSTONE is the Defendant in a civil action brought in the County Court at Law No. 6, El Paso County, Texas, Cause No. 2019-DCV2336, reflecting the same style with respect to the parties as this Notice of Removal. Defendant in this action has been served and seeks this removal. Copies of all papers on file in the State Court action are attached to this notice as Exhibit “A.”

2. On December 9, 2019, the Texas Secretary of State, on behalf of Defendant, was served with Plaintiff’s First Amended Petition (“Petition”) in the State Court action. Thus, this notice is properly filed within the thirty (30) day period for the filing of a Notice of Removal pursuant to 28 U.S.C. § 1446(b).

3. In the Petition, Plaintiff asserts he was employed by CORNERSTONE as a truck driver. Plaintiff alleges that he was wrongfully terminated because, while in California, he refused to violate a Federal statute, *i.e.*, 8 U.S.C. § 1324. Petition at ¶ VI.

#### **Diversity Jurisdiction**

4. This Court has diversity jurisdiction over the above-entitled action pursuant to 28 U.S.C. § 1332 and the action may be removed by this Court pursuant to 28 U.S.C. § 1441(b). Plaintiff alleges that he is a resident of El Paso, Texas. CORNERSTONE is an Indiana Corporation with its principal place of business in Indiana. The amount in controversy is stated by Plaintiff to be over \$1,000,000.00. Petition at ¶ IX. Accordingly, removal of this action is proper pursuant to 28 U.S.C. § 1441(b).

#### **Federal Question Jurisdiction**

5. Plaintiff alleges a single cause of action asserting that he was wrongfully terminated because he refused to violate a Federal statute, *i.e.*, 8 U.S.C. § 1324. Petition at ¶ VI. Although Plaintiff asserts a state court cause of action, it clearly turns on Federal law. It is well settled that the federal courts have jurisdiction over a state law claim that "necessarily raise[s] a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities." *Grable & Sons Metal Prods. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 314 (2005). As such, removal is proper under 28 U.S.C. § 1331 granting this Court original jurisdiction over federal questions arising under the laws of the United States of America.

#### **Conclusion**

3. This notice is filed with the Court within thirty (30) days after the service of Plaintiff's First Amended Petition and is thus timely filed under 28 U.S.C. § 1446(b).

4. Attached hereto As Exhibit "A" is a copy of all pleadings filed in the aforementioned state court action.

5. Accordingly, removal of this action is proper pursuant to 28 U.S.C. § 1441(a).

**WHEREFORE, PREMISES CONSIDERED,** Defendant hereby gives notice to the Court and all parties that the above-entitled action has been removed from County Court at Law No. 6 of El Paso County, Texas, to the United States District Court for the Western District of Texas, El Paso Division.

Respectfully submitted,

**MOUNCE, GREEN, MYERS,  
SAFI, PAXSON & GALATZAN  
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A handwritten signature in blue ink, appearing to read "B. A. Koehler", with a long horizontal line extending to the right.

By: \_\_\_\_\_

Bruce A. Koehler

State Bar No. 11649300

Monica L. Perez

State Bar No. 24083662

Attorneys for Defendant CORNERSTONE  
INDUSTRIES CORP.

**CERTIFICATE OF SERVICE**

I certify that on the 30<sup>th</sup> day of December, 2019, the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the following:

Oscar Mendez, Jr.  
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[omendez@scherrlegate.com](mailto:omendez@scherrlegate.com)



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Bruce A. Koehler